

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

BRIAN E. DEMUTH, M.D.

Holder of License No. 15614
For the Practice of Allopathic Medicine
In the State of Arizona

Case No. MD-05-0788A

**CONSENT AGREEMENT FOR
LETTER OF REPRIMAND**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Brian E. DeMuth, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement of any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

5. This Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any waiver,

1 express or implied, of the Board's statutory authority or jurisdiction regarding any other
2 pending or future investigation, action or proceeding. The acceptance of this Consent
3 Agreement does not preclude any other agency, subdivision or officer of this State from
4 instituting other civil or criminal proceedings with respect to the conduct that is the subject
5 of this Consent Agreement.

6 6. All admissions made by Respondent are solely for final disposition of this
7 matter and any subsequent related administrative proceedings or civil litigation involving
8 the Board and Respondent. Therefore, said admissions by Respondent are not intended
9 or made for any other use, such as in the context of another state or federal government
10 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
11 any other state or federal court.

12 7. Upon signing this agreement, and returning this document (or a copy thereof) to
13 the Board's Executive Director, Respondent may not revoke the acceptance of the
14 Consent Agreement. Respondent may not make any modifications to the document. Any
15 modifications to this original document are ineffective and void unless mutually approved
16 by the parties.

17 8. If the Board does not adopt this Consent Agreement, Respondent will not
18 assert as a defense that the Board's consideration of this Consent Agreement constitutes
19 bias, prejudice, prejudgment or other similar defense.

20 9. This Consent Agreement, once approved and signed, is a public record that will
21 be publicly disseminated as a formal action of the Board and will be reported to the
22 National Practitioner Data Bank and to the Arizona Medical Board's website.

23 10. If any part of the Consent Agreement is later declared void or otherwise
24 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force
25 and effect.

1 11. Any violation of this Consent Agreement constitutes unprofessional conduct
2 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("violating a formal order,
3 probation, consent agreement or stipulation issued or entered into by the board or its
4 executive director under this chapter") and 32-1451.

5
6
7 
8 BRIAN E. DEMUTH, M.D.

DATED: 8/25/06

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 15614 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-05-0788A after receiving notification of a malpractice settlement involving Respondent's care and treatment of a thirty-four year-old female patient ("CR").

4. On November 1, 2001 at 5:40 p.m. CR was admitted to the hospital labor and delivery unit at thirty-five weeks gestation after she experienced partial spontaneous rupture of membranes. Respondent was the on-call physician and assumed responsibility for CR's care.

5. Respondent started CR on Pitocin Augmentation at 1:30 a.m. on November 2, 2001 and she was complete with vertex at -0- station at 2:38 a.m. At 2:41 a.m. the nursing staff ("Nursing Staff") noted variable decelerations and called Respondent for an evaluation. Respondent noted a forebag and performed an artificial rupture of membranes that revealed clear fluid. Respondent applied an internal scalp electrode. Respondent elected to allow for passive descent of the head (without pushing).

6. At 3:51 a.m. Nursing Staff again noted variable decelerations and a decrease in short term variability. However, the infant continued to be responsive to fetal scalp stimulation and vaginal examination. At 4:10 a.m. CR began pushing. Nursing Staff noted that variable decelerations continued indicating potential fetal distress. At 5:11 a.m. CR experienced tachycardia. Absent variability and prolonged decelerations were also present. Respondent attempted a vaginal vacuum delivery without success. At 5:42 a.m., Respondent attempted a vaginal forceps delivery without success. Respondent then took

1 CR for a Cesarean Section and reapplied the scalp electrode he had removed during the
2 attempts at vaginal delivery. The electrode revealed fetal heart tones of 30 – 40.

3 7. CR's prenatal care physician arrived at the hospital and assisted Respondent
4 with the emergency Cesarean Section. The infant was delivered with Apgar scores of
5 0/0/0 and was pronounced dead. A cord blood sample taken after delivery showed a pH
6 level of 6.85 indicating a significant acidosis caused by the fetal distress.

7 8. The standard of care when monitoring a patient in labor requires Respondent
8 to assess the fetal heart rate tracing. The standard of care required Respondent to detect
9 an abnormal tracing and evaluate and treat the patient to resolve the potential problem. If
10 a continued abnormality persists, the standard of care required he expedite delivery in the
11 safest manner for both the mother and the fetus and not attempt vaginal delivery.

12 9. Respondent deviated from the standard of care because he did not
13 recognize the ominous fetal heart rate tracing and did not attempt intrauterine
14 resuscitation, instead attempting two failed vaginal deliveries that should not have been
15 performed, delaying the delivery even more and stressing an already compromised fetus.

16 10. Respondent's failed attempts at vaginal delivery delayed the Cesarean
17 Section and resulted in the infant's death.

18 **CONCLUSIONS OF LAW**

19 1. The Board possesses jurisdiction over the subject matter hereof and over
20 Respondent.

21 2. The conduct and circumstances described above constitute unprofessional
22 conduct pursuant to A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be
23 harmful or dangerous to the health of the patient or the public").

24 3. The conduct and circumstances described above constitute unprofessional
25 conduct pursuant to A.R.S. § 32-1401 (27)(ll) ("[c]onduct that the board determines is

gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.")

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand for failure to recognize fetal distress and failure to deliver an infant in a timely manner resulting in the death of the infant.

2. This Order is the final disposition of case number MD-05-0788A.

DATED AND EFFECTIVE this 13th day of October, 2006.

(SEAL)



ARIZONA MEDICAL BOARD

By

T.C. Miller

TIMOTHY C. MILLER, J.D.
Executive Director

ORIGINAL of the foregoing filed
this 13th day of October, 2006 with:

Arizona Medical Board
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

EXECUTED COPY of the foregoing mailed
this 13th day of October, 2006 to:

Brian E. DeMuth, M.D.
Address of Record

For M.D.

Investigational Review